UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.105
7 May 1992

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE

Eighth session

SUMMARY RECORD OF THE 105th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 28 April 1992, at 10 a.m.

Chairman: Mr. VOYAME

CONTENTS

Consideration of reports submitted by States parties under article 19 of the Convention

Replies of the Government of Uruguay to the questions asked by the the Committee against Torture

Organizational and other matters (continued)

Submission of reports by States parties under article 19 of the Convention

---

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the meetings of this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.92-12259/4457B

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7)

Replies of the Government of Uruguay to the questions asked by the Committee against Torture (CAT/C/5/Add.30)

1. At the invitation of the Chairman, Mr. Lacarte Muró and Mr. Chabén (Uruguay) took places at the Committee table.

2. The CHAIRMAN said that, during its consideration of the initial report of Uruguay at the preceding session, the Committee had asked many questions of the Uruguayan delegation, which had requested time in which to reply. Document CAT/C/5/Add.30 contained very detailed answers to those questions. The Committee was now in the fourth stage of its consideration of the report, namely, that of final observations.

3. Speaking as a member of the Committee, he said that he would like to make two general comments based on examples taken from the replies. In the first place, there appeared to be a number of laws which were not consistent with the Constitution and a number of regulations which were not consistent with the laws. Although it had been stated that the Constitution took precedence in such cases and that judges had an obligation to ensure that the laws were compatible with the Constitution, it was not only judges who enforced the laws, but also the police, which tended to apply regulations blindly. The police could, moreover, hardly be expected to guarantee that laws were compatible with the Constitution. That situation would therefore have to be changed in order to make the system more coherent.

4. Secondly, the Government of Uruguay stated that torture continued to be practised in a few cases, which it naturally condemned, but which were caused by habits acquired under the dictatorship. That was a matter of regret to the Committee, even though it understood what was involved, and it considered that those guilty must continue to be energetically prosecuted. Although there had been administrative inquiries and some cases had been referred to the courts, there had been no indication in the replies of the Uruguayan delegation that anyone had been convicted.

5. Mr. KHITRIN said that the Government of Uruguay had not taken strong enough measures to prosecute the persons responsible for torture under the dictatorship. He also had doubts about the effectiveness of the measures taken to prohibit torture. For example, it was indicated in the report that some 600 doctors had been found guilty of having taken part in acts of torture. However, it was not enough to disbar them from the Medical Association; they should also be severely punished. The same was true of cases of the release of persons who had been found guilty of acts of torture committed on the orders of a superior officer.

6. The CHAIRMAN recalled that Uruguay was the first country to have acceded to the Convention and that it would submit its first periodic report in June 1992.

7. Mr. SORENSEN said that he was satisfied with the replies of the Uruguayan delegation. He commended the Government of Uruguay on its very detailed answers and said he thought that an interval between the time when questions were asked and replies were given might be a good thing for the Committee's work.

8. In connection with article 14 of the Convention relating to legal measures taken on behalf of victims of torture, he noted that Uruguay's replies did not refer at all to medical rehabilitation; he hoped that the periodic report to be submitted shortly would deal in depth with that question. He had also found it useful to have written replies.

9. Mr. MIKHAILOV said that he endorsed the comments by the Chairman, Mr. Khitrin and Mr. Sorensen. He had found the replies to be specific, objective, detailed and accurate. The Government of Uruguay had described the specific legal situation as it was at the present time. Although it was to be deplored that cases of torture still existed, it must be noted that the Government sincerely wanted to put an end to that practice and to bring democracy to the country.

10. Mr. GIL LAVEDRA (Country Rapporteur) thanked Uruguay for the efforts it had made to reply in such detail to the questions asked by the Committee. The initial report and the answers made it clear that Uruguay was firmly determined to respect its international commitments and to enforce the rule of law in the country. Despite those efforts, however, some problems still remained. In his opinion, the greatest problems were caused by the rules relating to prison treatment and the maintenance of some regulations which had no place in a State subject to the rule of law. He was thinking in particular of Decree No. 690/980, which allowed the police to hold a suspect in custody in order to obtain information from him. It was a well-known fact that, although the police had that possibility, it more often than not gave rise to abuses and ill-treatment.

11. The report stated that Decree No. 690/980, which had not been repealed, was not binding, since the court could declare it incompatible with higher-ranking legal provisions. Some reservations were none the less in order, for Uruguay had a diffuse system of constitutional monitoring; specific provisions would thus have to be adopted because, if a law was not repealed, it was applied. That was what had happened in the case referred to in annex 6 of the initial report of Uruguay (CAT/C/5/Add.27), which showed that Decree No. 690/980 had been applied. The matter would therefore have to be decided by the executive. The same was true of the question of the prison system, as governed by Decree-Law No. 14470, which embodied the principle of individual treatment and distinguished between accused persons and convicted persons. In fact, the point was only that such persons should be physically separated; the regime applicable to them was the same, as clearly shown by articles 2, 4 and 25 of the Decree-Law.

12. In the absence of judicial supervision, moreover, the prison system was very unwieldy and that created quite a few problems. During the visit by the Supreme Court of Justice to La Libertad prison in November 1990, there had been many signs of ill-treatment. The provisions governing the prison system therefore had to be brought into line with the Convention.

13. The first and second reports also gave rise to some doubts that might be dispelled in the periodic report to be submitted soon. One problem was how to interpret what was meant by the direct application of the rules of the Convention. Several sections of the report stated that the provisions of international treaties formed part of internal law and that they were thus directly applicable by the courts. However, more detailed replies should have been given to certain questions relating, for example, to articles 3 and 15 of the Convention. In other cases where long and detailed answers had been given, it would have been easier simply to confirm that the Convention was being applied.

14. He warmly commended Uruguay on its very strong commitment to the rule of law and democracy. It was not only the first country to have acceded to the Convention, but one of the few to have accepted the Committee's competence to receive complaints. The authorities also showed a keen interest in applying the rules of the Convention. In that connection, he referred to the training courses organized for police and prison staff by the Ministry of the Interior in cooperation with the United Nations Centre for Human Rights; the pilot project for teaching human rights starting in primary school, in cooperation with the Latin American Human Rights Institute; the establishment of a chair of human rights at the University of the Republic; and the establishment of a centre for cooperation between the Ministry of Foreign Affairs and the United Nations Centre for Human Rights to bring domestic legislation into line with all the provisions of the international conventions to which Uruguay was a party. He also noted that a technical cooperation project had been set up with WHO to protect the victims of torture.

15. He looked forward with great interest to the results of those praiseworthy efforts and was sure that those results would be reflected in the periodic report Uruguay would submit in the near future.

16. Mr. DIPANDA MOUELLE (Alternate Country Rapporteur) said that he associated himself with Mr. Gil Lavedra's congratulations and comments. He noted that Uruguay's clear replies showed that it was making serious efforts to implement the Convention.

17. The CHAIRMAN said that the comments and recommendations made by the Country Rapporteur and the Alternate Country Rapporteur were supported by the Committee as a whole. Those comments and recommendations would be communicated to the Government of Uruguay so that it might take them into account. He once again thanked the delegation for Uruguay's clear, full and open answers to the Committee's questions.

18. Mr. LACARTE MURO (Uruguay) thanked the Chairman and the members of the Committee and said that the comments by the members of the Committee would be reported to his Government that very day. He had taken note of some very specific comments and recalled that Uruguay's aspirations were profoundly democratic. He welcomed the fact that the Committee had clearly understood that the intention of the Government of Uruguay was to eliminate all traces of its shameful past and he assured the Committee that the next report would further confirm that intention.

19. Mr. Lacarte Muró and Mr. Chabén (Uruguay) withdrew.

20. The meeting was suspended at 10.40 a.m. and resumed at 10.50 a.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 5) (continued)

21. The CHAIRMAN said that, after the meeting, Mr. Sorensen would give a talk at WHO on the topic of "torture in modern times".

Exchange of views on the question of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

22. Mr. BURNS said that, at its preceding session, the Commission on Human Rights had had before it a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which had been submitted by Costa Rica and would set up an international system of periodic unannounced visits to places of detention. The body entrusted with that task would play a preventive role, unlike the Committee, whose role was to react to de facto situations brought to its attention, and the International Committee of the Red Cross, which also intervened in already existing situations, such as armed conflicts.

23. Although the draft protocol had a very praiseworthy objective, it had given rise to some doubts, particularly about the relationship between the future body, the Committee against Torture and the Special Rapporteur on torture. In reply to those concerns, it had been stated that there would be no conflict of responsibilities and that the Committee's work would be taken fully into account. It had also been proposed that the body responsible for those preventive visits should be a subcommittee of the Committee against Torture.

24. The draft protocol was in keeping with the wishes of all, including many non-governmental organizations which had fully supported it in a recent report and urged that it should be rapidly implemented. There was no doubt that the Commission on Human Rights would continue to work on the draft protocol. It might well be that the Committee would then be given responsibility for a future subcommittee and that it would be called upon to set up the necessary inspection procedures, a delicate task indeed.

25. Mr. EL IBRASHI said that he would like to know exactly what role the Committee would play in the implementation of the future protocol and whether it was now supposed to make comments on and amendments to the draft protocol. If so, the members of the Committee might first need some time to consider the text more carefully.

26. The CHAIRMAN said that, so far, the Committee had not been consulted on the draft protocol.

27. Mrs. KLEIN BIDMON (Representative of the Secretary-General) said that, when the Commission on Human Rights had considered the question at its latest session, it had decided to set up a working group to discuss the draft protocol. The working group might ask for the Committee's views.

28. Mr. MIKHAILOV said that the members of the Committee would undoubtedly have opinions and proposals on the draft protocol. The question was worth thinking about and, as Mr. El Ibrashi had suggested, it might be a good thing for the Committee to come back to it at a subsequent meeting.

29. Mr. BURNS said that Mr. El Ibrashi had raised the key question of the Committee's competence in that regard. When the Committee discussed the matter, it would have to bear in mind article 20 of the Convention, which defined its role in respect of inquiries. With regard to the question of the Committee's role in a future system, the answer was quite simple: it would be to elect the members of the subcommittee. Although it was true that the Commission on Human Rights had not asked the Committee to make any recommendations, the Committee would still have to be prepared to state its views when it was requested to do so.

30. Mr. SORENSEN said he was convinced that the Committee would be called upon to state its views on that very important question and recalled that the draft protocol submitted by Costa Rica would set up a body that was very similar to the European Committee for the Prevention of Torture. Since he was a member of that Committee, he had a great deal to say about the draft protocol. He had followed the matter closely and could provide useful information on the work of the European Committee, whose latest report he had just received and whose experience would make it possible to avoid serious mistakes.

31. In the first place, the principle of visits to places of detention was excellent, but the problem was to decide how they should be conducted. There were several traps to be avoided. Inspections, whose aim was preventive in nature, absolutely had to be confidential because, otherwise, there would be no point in carrying them out. Worse still, if Government action and confidential action were combined, they might cancel each other out; they both served a purpose, provided that they were carried out separately, and a merger between the Committee and the future body would be counterproductive. From that point of view, regional inspection arrangements would be more flexible and more suitable than an unwieldy international mechanism which would, inter alia, give rise to enormous language problems during on-the-spot visits.

32. Mr. EL IBRASHI said he also believed that the Committee would have a say in a question of the draft protocol and that it should be prepared to state its views when the Commission on Human Rights requested it to do so. In that connection, it might be advisable for the latest report of the European Committee for the Prevention of Torture to be distributed to the members of the Committee for their information.

33. Mr. BEN AMMAR said that the draft protocol was in keeping with the spirit of the Convention and, in particular, its articles 2 and 11. Its adoption would be a logical consequence of the Convention, particularly since prevention was at least as effective as so-called "repressive" action. The Committee should therefore discuss that question in a constructive and optimistic spirit at a later meeting.

34. Mrs. KLEIN BIDMON (Representative of the Secretary-General) drew the Committee's attention to the main provisions of Commission on Human Rights resolution 1992/43, in which it decided to set up an open-ended working group to prepare a draft optional protocol to the Convention against Torture and invited Governments, intergovernmental bodies and the Committee against Torture to transmit comments on the draft protocol. Since the establishment of the working group would have financial implications, the Economic and Social Council had to agree to it.

35. Mr. BRUNI (Secretary of the Committee) said that the Committee had already discussed a possible draft protocol and that a summary of its debates on the question was to be found in paragraphs 16 to 20 of its report to the General Assembly at its forty-sixth session (A/46/46) and in the summary record contained in document CAT/C/SR.80.

36. Mr. SORENSEN said that he welcomed the emphasis Mr. Ben Ammar had placed on the preventive nature of visits to places of detention. He also suggested that the Committee should consider the question of the draft protocol on Friday, 1 May, so that a working group which the Committee might set up for that purpose could meet the following day and submit a report to the Committee at the beginning of the following week.

37. Mr. GIL LAVEDRA said that the Committee should be in a position to state its views on a draft protocol at its next session and that the question should then be included in its agenda. He also noted that the members of the Committee all agreed on the need for visits to places of detention in States parties, but there were problems of coordination, particularly at the regional level. He therefore proposed that the Committee should set a date for an exchange of views on the question. A rapporteur or a working group would then prepare a report, which would lead to a final document.

38. The CHAIRMAN, summing up the discussion, suggested that the consideration of the draft protocol should be postponed until the beginning of the following week and requested the secretariat to provide the members of the Committee with the documentation on the question that had been made available to the European Committee for the Prevention of Torture, since there appeared to be an analogy between what the European Committee was proposing at the regional level and what the Committee against Torture was proposing at the international level. He gathered that Mr. Burns would agree to chair the working group of the Committee which might be set up to discuss that question.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 6) (CAT/C/5, 7, 9, 12, 16, 17 and 18)

39. Mr. BRUNI (Secretary of the Committee) said that 27 States parties had been due to submit their initial reports in 1988 and that the reports of Togo and Uganda had still not been received by the Committee. At its seventh session, the Committee had decided to invite Togo and Uganda to submit their initial reports and the additional reports requested in a single document. By notes verbales of 31 December 1991, the Secretary-General had brought that decision of the Committee to the attention of the two States parties.

40. At its seventh session, the Committee had decided not to consider the report of Belize in the absence of the representative of the State party and to request it to complete its report so that the Committee might consider it at the current session. The secretariat had communicated that decision to the Government of Belize in December 1991 and had sent it a reminder in March 1992, but it had not received any reply. The Government of Afghanistan had withdrawn the text it had made available to the secretariat in order to submit a new initial report, which would be considered at the ninth session.

41. With regard to the States which had been due to submit their initial reports in 1989, 2 out of 10, namely, Guyana and Peru, had still not transmitted their reports to the secretariat, which had sent them reminders. Of the 11 States whose initial reports had been due in 1990, only Brazil, Guinea, Poland and Portugal had still not transmitted their reports to the secretariat. Notes verbales had also been sent to those States. Of the seven initial reports requested for 1991, six had not been received by the secretariat, which had sent reminders. The report of Germany, which had now been made available to the members of the Committee in the working languages, would be considered at the ninth session.

42. At earlier sessions, the Committee had requested additional information from seven States and supplementary reports from eight States. The legislative texts requested from the Government of Denmark during the consideration of Denmark's initial report had been made available to the Committee. China had still not transmitted its initial report, despite the two reminders the secretariat had sent it. The Libyan Arab Jamahiriya had informed the secretariat that it would submit its initial report early enough so that the Committee might consider it at its ninth session.

43. From June 1988 to March 1992, 55 initial reports had been requested: 41 had been submitted and 14 had not been received. The Committee should also receive a dozen or so reports prior to its April 1993 session.

44. The CHAIRMAN recalled that the secretariat sent reminders to States which had not submitted their reports on time, first, after one year and, then, every six months. Even if that method was useful, it was not fully effective. Should the Committee adopt other measures or continue to follow the current practice?

45. Mr. GIL LAVEDRA said that, during a discussion at its preceding session, the Committee had noted that the submission of reports was a basic obligation of States and had considered the possibility of stepping up the measures it took to encourage States to submit their reports. He suggested that stronger measures should be taken against States which should have submitted their initial reports in 1988 or 1989.

46. Mr. LORENZO said that, for the States whose reports were most overdue, the Committee might request one single report to take the place of the initial report and the periodic report, as it had planned to do at the preceding session, and request the Centre for Human Rights to intervene through diplomatic channels.

47. The CHAIRMAN said that the Committee had already requested Togo and Uganda to combine their initial reports and first periodic reports in a single document, but, unfortunately, that request had still not been met. He also feared that such a measure might encourage States not to hurry to submit the initial report before the first periodic report.

48. Mrs. KLEIN BIDMON (Representative of the Secretary-General) said that the Centre for Human Rights would willingly approach permanent missions, but could only transmit a decision or a letter from the Committee or organize a meeting between the Chairman or the Bureau of the Committee and a representative of the permanent mission concerned. In any event, it could act only as a messenger; any other step had to come from the Committee itself.

49. Mr. EL IBRASHI said that it was up to the Committee to take initiatives and for the Chairman of the Committee to meet with the representatives of countries which were far behind in the submission of their reports.

50. Mr. SORENSEN said that, when the Committee had discussed the problem of the late submission of reports at its last session, he had suggested that the Committee should indicate the names of the States whose reports were overdue at the press conference after the permanent missions of those States had been notified and that it should decide to consider the situation in those countries in the absence of a report.

51. Mr. BEN AMMAR said that the Committee might continue to implement the measures decided on at the last session and adopt new measures to deal with new situations.

52. Mr. EL IBRASHI said that, in his view, it was important for the Chairman to contact the ambassadors of the countries concerned before giving the names of those countries at the press conference.

53. Mr. MIKHAILOV said that, in addition to the measures proposed by the other members, the Committee might encourage States to submit their initial reports as soon as possible, bring the problem of the late submission of reports to the attention of the Under-Secretary-General so that he might possibly send a note to the States concerned and inform the meeting of States parties to the Convention. All those measures might help to enhance the effectiveness of the Committee's work.

54. Mr. LORENZO said that, if the Committee contacted a particular permanent mission, it might ask the representative of the State in question whether there were technical problems involved in the submission of the report and propose the assistance of the Centre for Human Rights.

55. The CHAIRMAN, summing up the discussion, said that the Committee was considering the possibility of requesting States which were very late in submitting their reports to submit an initial report and a periodic report simultaneously in a single document, that possibility already having been applied to two States. With regard to contacts with permanent missions, he had no way meant to imply that the Under-Secretary-General might act as a messenger: he had thought that the Under-Secretary-General might talk personally with the ambassadors of the countries concerned. Since the members of the Committee considered it preferable, however, he, as Chairman of the Committee, would agree to meet with the representatives of the States whose reports were overdue. During those discussions, he would not fail to ask about problems with the preparation of reports and would propose the assistance of the Committee and the Centre for Human Rights, drawing the attention of the representatives to the reporting obligations of States parties under the Convention.

56. The countries which had not submitted their reports on time had already been referred to in the Committee's report to the General Assembly and it might be a rather sensitive matter to name them at the press conference, particularly as the situation was not at all catastrophic. For the time being, it would be enough to indicate generally that States were not all submitting their reports by the appointed deadlines. If the situation grew worse, the Committee might then have to give journalists the names of the States concerned as a means of alerting international public opinion.

57. If he heard no objection, he would take it that the Committee wanted him to contact the heads of the permanent missions of the States whose reports were three years overdue in order to inform them that it was concerned and would like them to comply with their reporting obligations and in order to offer them the assistance of the Centre for Human Rights.

58. It was so decided.

59. Mr. GIL LAVEDRA stressed that, in his talks with the representatives of permanent missions, the Chairman should make it clear that the late submission of reports and the complications it might create for the Committee's work were linked to the problems States might be encountering.

60. The CHAIRMAN said that that was how he understood the action the Committee had requested him to take. At the current session, he was supposed to contact four States: Togo, Uganda, Guyana and Peru. If a country did not have a permanent mission in Geneva, he would address a letter to its Minister for Foreign Affairs.

61. Referring to Mr. Sorensen's suggestion that the Committee should consider the situation of States which had not submitted reports on the basis of information available from other sources, he said that, although such a practice might be admissible, it should be followed only as a last resort.

62. Mr. BEN AMMAR said that, at a later stage, the Committee might also state that the non-submission of reports was a serious breach of one of the articles of the Convention.

63. The CHAIRMAN said that that possibility might also be considered later. At present, however, in itself and in comparison with the situation in other committees, the situation with regard to the submission of reports to the Committee against Torture was not bad.

The meeting rose at 12.10 p.m.